

**Application No.:** 10/658,926  
**Filing Date:** September 9, 2003

### REMARKS

Claims 25-29 and 56-79 are currently pending. In the present amendment, Claims 70, 76, 78, and 79 are amended, Claims 25-29, 56-69, 74, and 75 are canceled, and new Claim 80 has been added. Support for the amendments and new claim is found in the specification and claims as filed. Applicants reserve the ability to pursue the canceled claims or similar claims in one or more continuing applications.

#### Allowed and Allowable Subject Matter

Applicants gratefully acknowledge allowance of Claims 70-73 and 77-79. Applicants also gratefully acknowledge the indication of allowability of Claim 76 if rewritten in independent form to include all the limitations of the base claim and any intervening claims. Applicants have rewritten Claim 76 to include all the limitations of base Claim 25.

Paragraph 8 of the pending Office Action in the section entitled "Allowable Subject Matter" states:

The prior art of record fails to anticipate or make obvious the inventions of claims 70-73 and 77-79 including, *inter-alia*, a probe comprising a gas-permeable cannula with proximal and distal extremities, where the distal extremity is adapted to be inserted in a patient's blood vessel and contains a sensor assembly with oxygen and carbon dioxide sensors that provides an electrical signal when the cannula is disposed in the blood, and where the proximal extremity carries a connector; the distal extremity is adapted to slidably travel through an introducer when being inserted into the vessel, and the cannula and connector are sized such that the introducer may be slid off the proximal extremity and the cannula after the distal extremity has been inserted. The sensor assembly further comprises an insulating conduit, first and second working electrodes, first and second reference electrodes, and first, second, third and fourth conductors extending through the cannula to the connect to the electrodes in the sensing assembly, where the insulating conduit serves as a support for the first reference electrode and as a conduit for the conductor coupled to the second reference electrode.

Based on this statement, Applicants understand that the feature "the second reference electrode extending at least partially around the electrically insulating conduit" has not been relied upon by the Examiner in finding Claim 70 to be allowable. Accordingly, Applicants have removed this feature from Claim 70 and have added new dependent Claim 80 reciting this feature.

Additionally, in order to clarify antecedent basis, Applicants have amended Claim 78 to recite that the first working electrode extends at least partially around the insulating conduit and

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have amended Claim 79 to recite that the first reference electrode extends at least partially around the insulating conduit.

Applicants submit that these amendments are fully supported by the application as originally filed and that no new matter is added by these amendments.

Applicants respectfully submit that the allowed claims remain in condition for allowance and that the allowable claims are now in condition for allowance. Accordingly, the Applicants respectfully request that the Examiner pass Claims 70-73 and 76-80 to allowance.

*Response to Rejections Under 35 U.S.C. § 103(a)*

Claims 25, 26, 28, 29, 63, 64, 68, 69, 74, and 75 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Pub. No. 2003/0050547 to Lebel et al. in view of U.S. Patent No. 5,596,988 to Markle et al., U.S. Patent No. 6,616,614 to Webber et al., and U.S. Patent No. 4,861,454 to Ushizawa et al.

Claim 27 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Lebel in view of Markle, Webber, and Ushizawa, and further in view of U.S. Patent No. 5,497,772 to Schulman et al.

Claims 56-58, 60, and 61 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Lebel in view of Markle, Webber, and Ushizawa, and further in view of U.S. Patent No. 5,391,250 to Cheney, II et al.

Claim 59 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Lebel in view of Markle, Webber, Ushizawa, and Cheney, and further in view of U.S. Patent Pub. No. 2001/0051768 to Schulman et al.

Claim 62 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Lebel in view of Markle, Webber, Ushizawa, and Cheney, and further in view of U.S. Patent Pub. No. 2001/0029337 to Pantages et al.

Claim 65 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Lebel in view of Markle, Webber, and Ushizawa, and further in view of U.S. Patent No. 6,503,225 to Kirsch et al.

Although Applicants do not necessarily agree with the propriety of the rejections, Claims 25-29, 56-69, 74, and 75 have been canceled without prejudice, solely to facilitate issuance of the claims indicated to be allowed and allowable. Applicants reserve the ability to pursue the

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canceled claims, or similar claims, in one or more divisional, continuation, and/or continuation-in-part applications. Accordingly, Applicants respectfully request withdrawal of the rejection.

Co-Pending Applications of Assignee

Applicants wish to draw the Examiner's attention to the following applications of the present application's assignee.

<b>Docket No.</b>	<b>Serial No.</b>	<b>Title</b>	<b>Filed</b>
KEIMR.002DV1	12/027933	PROBE AND DISPLAY HAVING A GAS SENSOR ASSEMBLY AND SURFACE TREATMENT	2/7/2008
KEIMR.002DV2	12/027915	PROBE WITH GAS PERMEABLE MATERIAL SURROUNDING A GAS SENSOR ASSEMBLY	2/7/2008
KEIMR.002DV3	12/027902	SENSOR WITH CONDUCTOR AND SEALING GLASS	2/7/2008
KEIMR.002DV4	12/027898	DISPLAY AND PROBE HAVING REMOVABLE CONNECTIONS	2/7/2008
KEIMR.002DV5	12/027905	SENSOR PROBE AND DISPLAY MODULE	2/7/2008
KEIMR.003A	09/956064	APPARATUS AND METHOD FOR ASCERTAINING CARDIAC OUTPUT AND OTHER PARAMETERS	9/18/2001
KEIMR.006A	12/172181	PROBES AND SENSORS FOR ASCERTAINING BLOOD CHARACTERISTICS AND METHODS AND DEVICES FOR USES THEREWITH	7/11/2008

No Disclaimers or Disavowals

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, the Applicants are not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. The Applicants expressly reserve the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child, or related prosecution history shall not reasonably infer that the Applicants have made any disclaimers or disavowals of any subject matter supported by the present application.

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Conclusion

In view of the forgoing, the present application is believed to be in condition for allowance, and such allowance is respectfully requested. If further issues remain to be resolved, the Applicants' undersigned attorney of record hereby formally requests a telephone interview with the Examiner. The Applicants' attorney can be reached at (949) 721-2864 or at the number listed below.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: 4/2/09

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